

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

PETER H. MCDIVIT,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 2:09-cv-02155-RCJ-PAL

**REPORT OF FINDINGS AND  
RECOMMENDATION**

(IFP Application - Dkt. #1)

Plaintiff Peter H. McDivit ("Plaintiff") is proceeding in this action *pro se*. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis* and submitted a complaint on November 10, 2009. This proceeding was referred to this court by Local Rule IB 1-9.

Pursuant to 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action in federal district court. The court may authorize the commencement of an action without prepayment of fees and costs or security by a person who makes affidavit that he is unable to pay such costs or give security. See 28 U.S.C. § 1915(a).

Plaintiff has submitted the affidavit required by § 1915(a). The affidavit provides that Plaintiff is employed by Southwest Airlines in Las Vegas, Nevada, and his net monthly income is \$2600.00. Plaintiff also states that he has \$4500.00 in cash or in a bank account. Plaintiff states that he does not have any dependents. Although Plaintiff has listed his various expenses, his income exceeds these amounts. The court finds that Plaintiff has sufficient income and assets to pre-pay the costs and fees of this action, and Plaintiff is ineligible to proceed *in forma pauperis*.

Accordingly,

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**IT IS RECOMMENDED** that Plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. #1) be **DENIED**, that Plaintiff be required to pay the filing fee of \$350.00, and that failure to do so within the time set by the district judge should result in dismissal of this action.

**IT IS FURTHER RECOMMENDED** that the Clerk of the Court should retain the complaint.

## NOTICE

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days after being served with these findings and recommendations, any party may file written objections with the court. Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and recommendations of a magistrate judge shall file and serve *specific written objections* together with points and authorities in support of those objections, within ten (10) days of the date of service of the findings and recommendations. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s Order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject to the page limitations found in LR 7-4.

Dated this 25th day of November, 2009.

  
PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE